

Exhibit 5

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Michael Ben-Jacob – October 11, 2021

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MASTER DOCKET 18-MD-2865 (LAK)
CASE NO. 18-CV-09797

_____)
IN RE:)
_____)
CUSTOMS AND TAX ADMINISTRATION OF)
THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
SCHEME LITIGATION)
_____)

C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
EXAMINATION OF
MICHAEL BEN-JACOB
DATE: October 11, 2021

REPORTED BY: MICHAEL FRIEDMAN, CCR

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TRANSCRIPT of the videotaped deposition

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of the witness, called for Oral Examination in the

7

above-captioned matter, said deposition being taken

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by and before MICHAEL FRIEDMAN, a Notary Public and

9

Certified Court Reporter of the State of New Jersey,

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via WEBEX, ALL PARTIES REMOTE, on October 11, 2021,

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commencing at approximately 9:00 in the morning.

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1 Q I'm asking you for your
2 understanding, in your words, if you
3 understand that's what you were called upon
4 to do?

5 A Well, since I don't have a
6 recollection of using those words, I would
7 say it is not true that we were called upon
8 to use -- to -- I say "we," meaning my
9 firm -- was called upon to implement or
10 advise upon all aspects.

11 We were asked to advise upon U.S.
12 legal issues, U.S. tax and pension plan
13 issues, and occasional other coordination of
14 advice with foreign counsel and
15 administrative matters.

16 But I was certainly not involved in
17 all aspects.

18 Q Let me ask you, please, to turn to
19 Exhibit 4480?

20 MR. MAGUIRE: Mark 4480.

21 (Whereupon the above mentioned was
22 marked for Identification.)

23 A I'm sorry. Yes, so I have this
24 exhibit in front of me.

25 Q And can you tell us, what is this

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1 A To clarify -- sorry.

2 Can you just rephrase or restate
3 your question?

4 Q Let me give you a different
5 question.

6 Did you tell your clients that you
7 approved their entering into the Danish
8 trading transactions?

9 A I did not tell my clients. And to
10 my knowledge, others in the firm did not tell
11 the clients that we approved of the Danish
12 trading transactions, nor were we asked by
13 the clients to render that advice.

14 Q Did you -- whether you told anyone
15 or not -- ever approve of your clients
16 entering into any Danish trading
17 transactions?

18 MR. DEWEY: Objection.

19 A What the firm approved were the
20 U.S. tax implications and treatment and U.S.
21 regulatory treatment of the -- yeah, of the
22 trading.

23 Q Did you ever tell your clients that
24 you or your firm did not approve of any
25 aspects of any Danish trading transactions?

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1 MR. DEWEY: Objection.

2 A Again, to be clear, we did not
3 advise on the trading of Danish securities.
4 We advised only on the U.S. and pension
5 aspects -- U.S. tax aspects of the ownership
6 of those shares.

7 Q Was there any aspect of the trading
8 in Danish shares in the establishment of any
9 LLCs, the sponsoring of any plans, the
10 trading or transactions associated with that,
11 or the making of any applications for
12 reclaims to Denmark?

13 Taking that entire ex-dividend
14 strategy as a whole, was there any aspect of
15 that as to which you or your firm told any of
16 your former clients they should not do or
17 that you believed it was not appropriate to
18 do?

19 MR. DEWEY: Objection.

20 A You listed seven or eight things.
21 I would have to ask you to take them one by
22 one.

23 Q Let me put it to you as a more
24 broad and general question.

25 Is there any time in your

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1 trade costs about \$10,000 to do per plan.

2 That includes custodian and broker fees.

3 It goes on to say, "For Belgian
4 last year, our 30 plans generated reclaims of
5 approximately 25 million Euro or about
6 31 million U.S. dollars at current exchange
7 rates."

8 Do you see that?

9 A I see that language, yes.

10 Q You see the reference to Sanjay?
11 You understand that to be to Sanjay Shah?

12 A Yes, I do.

13 Q You understood that Sanjay Shah
14 owned Solo Capital?

15 A To the best of my understanding,
16 yes.

17 Q Did you meet Sanjay Shah?

18 A No.

19 Q Have you ever spoken with Sanjay
20 Shah?

21 A I have a vague recollection that
22 there was a conference call with the client
23 group, others of Sanjay or Solo Capital's
24 employees, and I think Sanjay Shah may have
25 been on that call.

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1 I don't believe, to the best as I
2 can recall, ever having any direct
3 conversations with him.

4 Q What do you recall of that
5 conference call?

6 A I can't remember.

7 Q You'll see here that the plans were
8 generating -- had generated about \$31 million
9 over 30 plans in the prior year.

10 Do you see that?

11 A Can you point that language out to
12 me, please?

13 Q The one we just read, yeah, "For
14 Belgium last year?" Do you see that
15 sentence?

16 A Yes, I'm sorry. I was simply
17 reading the language from the e-mail that
18 says, "For Belgium last year, our 30 plans
19 generated reclaims of approximately Euro
20 25 million (or about USD 31,000,000 at
21 current exchange rates). "

22 Yes, I see that language.

23 Q And separately from this e-mail,
24 did your former clients relate to you that
25 the expectation from the trades with

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1 A I do. Yes, I see that.

2 Q Why were these details, in fact,
3 important to set forth in the memo?

4 A As a general matter of practice,
5 the law is applied to a set of facts. And so
6 we were advising here on the U.S. law matters
7 and U.S. tax matters.

8 We needed to understand and say we,
9 the firm, and those who were drafting this
10 memo, needed to understand the facts upon
11 which the law would apply.

12 Q And did you personally understand
13 the facts?

14 MR. DEWEY: Objection. You mean
15 the facts as referenced in this
16 paragraph, Bill?

17 MR. MAGUIRE: Yes, and it continues
18 over to the next page.

19 MR. DEWEY: Fair enough.

20 A I do recall that I reviewed the
21 memo before it was issued. And I do recall
22 that I had a general understanding of the
23 facts at the time.

24 Q Was there anyone at your firm who
25 you relied on to understand the business

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1 arrangement here?

2 A Well, I relied on the other subject
3 matter experts in this particular instance
4 that would have been mostly -- because this,
5 I believe, is pension issues -- would have
6 been mostly Arthur Woodard and
7 Kathleen Wechter.

8 But I would say that I relied upon
9 them to understand the business arrangements
10 to the extent necessary to render their
11 advice.

12 Q On Page 4 of the memo, there's a
13 paragraph in the middle of the page that
14 starts, "The Michelle plan simultaneously
15 entered into a securities lending agreement
16 with a third party under which it lent
17 securities in exchange for cash."

18 Do you see that?

19 A I do.

20 Q Do you understand the
21 "simultaneously" there refers to
22 simultaneously with the purchase of the
23 Danish shares?

24 MR. DEWEY: Objection.

25 A (Witness reviewing.)

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1 partnership structure. "

2 Do you see that?

3 A I do.

4 Q And what was the answer to that
5 question?

6 A (Witness reviewing.)

7 Well, again, I don't -- I don't
8 recall what the context was surrounding this
9 e-mail, and if it seems to derive from a
10 conversation that begins with, "As we
11 discussed," I have no recollection of that
12 conversation, so I can't place the context of
13 that comment.

14 Q Do you recall you or anyone at your
15 firm addressing the issue of whether a
16 pension plan could represent to Denmark that
17 it is the beneficial owner of tax reclaims
18 when that plan was a partner in a
19 partnership?

20 MR. DEWEY: Objection.

21 A Yes, I do recall that there were
22 internal discussions related to that general
23 question.

24 Q And who participated in those
25 general discussions?

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1 A To the best of my recollection, I
2 don't have an exclusive list, but to the best
3 that I can recall, it would have been Peter
4 Wells, Kathleen Wechter, Arthur Woodard.

5 There may have been others, but I
6 can't recall specifically other names.

7 Q And what was the upshot of those
8 discussions?

9 MR. DEWEY: This is discussions on
10 the representation to Denmark, Bill,
11 right?

12 MR. MAGUIRE: Yes.

13 MR. DEWEY: Okay.

14 A The general conclusion we reached
15 was that we were -- we are not Danish lawyers
16 and can't advise on Danish law matters. And
17 we turned back to the clients, in particular
18 in this instance, Jerome Lhote, as I seem to
19 recall, to ask if that was an issue that he
20 had vetted with Danish counsel.

21 And he indicated that he had and
22 that a -- and that that representation could
23 be made.

24 Q And did he tell you who was the
25 Danish counsel that he had vetted that with?

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1 tax provisions or the tax impact of the
2 document, not the business or transactional
3 side of the document. They themselves, as
4 I've mentioned, being attorneys, felt
5 competent, I believe, to handle those
6 aspects.

7 And to the best of my recollection,
8 it would have been Louis Tuchman who is
9 copied on this e-mail who would have reviewed
10 these documents.

11 Q So you did not review the general
12 master securities lending agreement -- I'm
13 sorry, the global masters securities lending
14 agreement?

15 A I don't have a specific
16 recollection of this e-mail exchange or the
17 document in question. I may have reviewed it
18 briefly, I may not have. I just don't
19 recall.

20 But the -- but the -- you know, the
21 real legal analysis, tax analysis of the
22 document would have been conducted by Louis
23 Tuchman.

24 Q Are you aware whether you or anyone
25 at your firm reviewed a global master

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1 securities lending agreement in connection
2 with any Danish trades by your client group?

3 A Again, I don't have a specific
4 recollection of who reviewed those documents,
5 or documents under that title, but I do
6 recall that we were being asked by the client
7 group to review the U.S. tax impact of those
8 documents.

9 In that context, those documents
10 would have been referred to the tax experts,
11 primarily Louis Tuchman in my firm at the
12 time.

13 Q If you go to the second-to-last
14 paragraph on this e-mail, it says, "Any fee
15 that the stock borrower or lender will be
16 paid is going to be paid by Solo out of their
17 revenues from these transactions."

18 Do you see that?

19 A Yes, I do.

20 Q Was that generally the case in
21 respect of the Danish transactions?

22 MR. DEWEY: Objection.

23 A As I think I'd mentioned earlier, I
24 don't recall the specific workings of the
25 documentation that governed the Danish

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1 this e-mail or the related exchanges and
2 discussions, but the statement says what it
3 says.

4 Q And was it a true statement?

5 MR. DEWEY: Objection.

6 A I -- as I sit here today, I have no
7 reason to think that I didn't think it was
8 correct at the time I wrote it.

9 Q What did you mean when you said
10 that "the pension plan would trade on behalf
11 of the partnership?"

12 MR. DEWEY: Objection.

13 A Again, I can't recall what my
14 thinking was when I drafted this e-mail.

15 Q Sir, did Patrick Michelle assist
16 you in connection with the Danish trading
17 transactions?

18 MR. DEWEY: Objection.

19 A I do generally recall that a number
20 of the U.S. side securities regulatory
21 questions arose and that those matters were
22 referred to our firm experts at the time,
23 Patrick Michelle being one of them.

24 Q And did Patrick Michelle tell you
25 that Solo needed to be registered with FINRA

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1 C E R T I F I C A T E

2 I, MICHAEL FRIEDMAN, a Certified Court
3 Reporter and Notary Public, qualified in and for
4 the State of New Jersey do hereby certify that
5 prior to the commencement of the examination
6 MICHAEL BEN-JACOB was duly affirmed by me to
7 testify to the truth the whole truth and nothing
8 but the truth.

9 I DO FURTHER CERTIFY that the foregoing
10 is a true and accurate transcript of the testimony
11 as taken stenographically by and before me at the
12 time, place and on the date hereinbefore set forth.

13 I DO FURTHER certify that I am neither a
14 relative of nor employee nor attorney nor counsel
15 for any of the parties to this action, and that I
16 am neither a relative nor employee of such attorney
17 or counsel, and that I am not financially
18 interested in the action.

19
20 
21

22 MICHAEL FRIEDMAN, CCR of the
23 State of New Jersey
24 License No: 30XI00228600
25 Date: October 13, 2021